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**JUN 20 2005**

**OFFICE OF PETITIONS**

In re Application of  
Mizzen et al.  
Application No. 10/068,059  
Filed: February 2, 2002  
Attorney Docket No. 12071-017002/SP-22  
US

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: **DECISION GRANTING PETITION**  
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This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(B) timely<sup>1</sup> filed September 14, 2004 requesting that the Office adjust the PAIR determination of PTA from a value of (zero) to a value of eleven (11) days.

Applicants' application for PTA is **GRANTED**. The Office will adjust the PTA calculation to reflect a value of eleven (11) days at the time of the mailing of the notice of allowance. The Office will adjust the PAIR calculation to reflect a value of eleven days.

Applicants assert that the Office erred in assessing a thirty-three (33) day reduction for an overdue three month reply to the Notice to File Missing Parts. Applicants assert that the complete response to the notice was filed on June 4, 2002 rather than Office determined date of June 17, 2002. Applicants have supplied a post card stamped receipt reflecting the date that the response to the missing parts was received within the USPTO. Applicants agree with the other PTA determinations of seventy-six days of PTA for the office to initially act upon the application within fourteen months of the filing date. See 37 CFR 1.702(a)(1). In addition applicants agree with the sixty-five (65) day reduction for the applicants' failure to reply to the non-final rejection outside of the three month period. See 37 CFR 1.704(b).

Applicants arguments are persuasive. The post card stamped receipt reflect that the date of response was in fact received by the Office on June 4, 2002 rather than July 18, 2002. Accordingly, applicants response is within the three month time period granted by the Office to reply without PTA consequences and therefore the PTA reduction for applicant delay in responding to the Notice to File Missing Parts is in error. Accordingly, the Office's assessment for a thirty-three day applicant delay for a late response to the Notice to File Missing Parts is in error. Accordingly, the correct determination at the time of the mailing of the notice of allowance is eleven days (76-65=11).

After the mailing of this decision, the Office will forward this application to the Office of Patent Publication for a prompt issuance of the patent. The Office apologizes for any delay in issuance of the patent and notes that any administrative delay for the issuance of the patent beyond four months of the payment of the issue fee and other requirements being satisfied will be assessed at

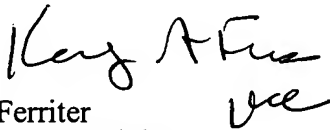
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<sup>1</sup>Issue fee was paid on September 14, 2004.

the time of the issuance of the patent and such notice will be provided in the issue notification letter.

The Office has assessed the \$200.00 fee for the filing of this application under 37 CFR 1.18(e). No additional fees are required by the Office.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy at 571-272-7757.

A handwritten signature in black ink, appearing to read "Karin Ferriter".

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
For Patent Examination Policy

cc: Copy of Adjusted PAIR calculation